IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF TEXAS LUFKIN DIVISION

HENRY MESA JR. #1492559	§	
v.	§	CIVIL ACTION NO. 9:12cv42
DR. KASULE, ET AL.	§	

MEMORANDUM ADOPTING REPORT AND RECOMMENDATION OF THE UNITED STATES MAGISTRATE JUDGE AND ENTERING FINAL JUDGMENT

The Plaintiff Henry Mesa Jr., proceeding *pro se*, filed this civil rights lawsuit under 42 U.S.C. §1983 complaining of alleged violations of his constitutional rights in the Texas Department of Criminal Justice, Correctional Institutions Division. This Court ordered that the case be referred to the United States Magistrate Judge pursuant to 28 U.S.C. §636(b)(1) and (3) and the Amended Order for the Adoption of Local Rules for the Assignment of Duties to United States Magistrate Judges.

Mesa complained that he was the victim of deliberate indifference to his serious medical needs through the fact that he has not been given hernia surgery. An evidentiary hearing was conducted, and the evidence showed that Mesa has been seen on a number of occasions by medical providers, but that these providers have determined that surgery was not warranted.

After review of the pleadings, testimony, and records, the Magistrate Judge determined that Mesa had not shown that he had been subjected to deliberate indifference to his serious medical needs. Accordingly, the Magistrate Judge issued a Report recommending that the lawsuit be dismissed with prejudice as frivolous and for failure to state a claim upon which relief may be granted. Mesa filed objections to the Report on May 8, 2013.

In his objections, Mesa stated that even if his lawsuit is to be dismissed, the dismissal should be without prejudice under the doctrine that his condition could become strangulated or obstructed. He says that if this happens, he should be permitted to re-open the case under the "relation back"

doctrine. In other words, Mesa says, he should be allowed to reopen the case if his condition worsens because the defendants did not take action when he first presented his symptoms. Mesa goes on to say that most prisoners with hernia problems are treated with trusses, but that his hernia is so large that it cannot be reduced by an abdominal binder.

Mesa's arguments offer no basis upon which to reject the Report of the Magistrate Judge. The evidence and testimony in this case did not show that the Defendants acted with deliberate indifference to his serious medical needs, meaning that a dismissal with prejudice of the claims presented in this lawsuit is warranted. *See* Marts v. Hines, 117 F.3d 1504, 1506 (5th Cir. 1997). Mesa's objections are without merit.

The Court has conducted a careful *de novo* review of the pleadings, testimony, and evidence in this cause, the Report of the Magistrate Judge, and the Plaintiff's objections thereto. Upon such *de novo* review, the Court has determined that the Report of the Magistrate Judge is correct and the Plaintiff's objections are without merit. It is accordingly

ORDERED that the Plaintiff's objections are overruled and the Report of the Magistrate Judge (docket no. 31) is ADOPTED as the opinion of the District Court. It is further

ORDERED that the above-styled civil action be and hereby is DISMISSED with prejudice as frivolous and for failure to state a claim upon which relief may be granted. 28 U.S.C. §1915A(b). It is further

ORDERED that a copy of this opinion shall be sent to the Administrator of the Strikes List for the Eastern District of Texas. Finally, it is

ORDERED that any and all motions which may be pending in this action are hereby DENIED.

So ORDERED and SIGNED this 15 day of May, 2013.

Ron Clark, United States District Judge

Rm Clark